

REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims.

Claims 1-7 and 10-24 are pending in the present application. Claims 8-9 have been canceled, and claims 18-24 have been added. Also, claims 1 and 2 have been amended.

No new matter has been added by way of these amendments and new claims because each amendment and claim is supported by the present specification. For example, the amendment to claim 1 is supported by the present specification in the paragraph bridging pages 6-7. The change to claim 2 is editorial in nature. New claims 18-20 are supported at page 9, line 16 to page 10, line 21, and page 14, lines 14-18. New claim 21 has support in the specification at page 5, lines 19-20. New claim 22 is supported by pending claim 1 and the specification at page 14, lines 14-18 and page 15, lines 5-11. New claims 23-24 are supported at page 15, line 16 to page 16, line 3. Thus, no new matter has been added.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and the objection, and to allow the currently pending claims.

Issues Under 35 U.S.C. § 103(a)

Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yong et al. (U.S. Patent 4,381,315; hereinafter Yong '315). Applicants respectfully submit that the Request for Reconsideration Under 37 C.F.R. § 1.116 (filed November 14, 2002) sufficiently addresses this rejection, and request that this rejection be withdrawn. However, Applicants respectfully traverse for additional reasons.

Present Invention

The present invention is directed to a frozen pie dough comprising a pie dough having dough layers containing a cereal flour, water and a fat as the main components and fat layers laminated with the dough layers alternatively. In the present invention, the voids and a chemical leavening agent are present between the dough layers and the fat layers of the pie dough. Further, the voids are generated by a quick action type chemical leavening agent. Also, the chemical leavening agent is a delayed action type chemical leavening agent and is uniformly dispersed between the dough layers and the fat layers. In contrast to conventional methods and products, the presently claimed frozen pie product can be placed directly into a high-power oven for a relatively short period of time and still achieve a final product having a crispy texture and a favorable layered structure.

Distinctions Over the Yong '315 Reference

Applicants respectfully submit that a *prima facie* case of obviousness has not been formed with respect to the Yong '315 reference because not all requirements for a *prima facie* case of obviousness have been satisfied. Under *In re Vaeck*, a cited prior art reference must teach or suggest all the claim limitations of the present invention. That is not the case here.

The present invention has voids and a chemical leavening agent that are present between the dough layers and the fat layers of the pie dough. The voids are generated by a quick action type chemical leavening agent that is uniformly dispersed between the dough layers and the fat layers.

In contrast to the present invention, Yong '315 describes water, leavening acid and leavening base that is "substantially isolated" from other ingredients (see claim 1), and voids that are undesirable (for example, see column 8, lines 52-55, describing "large voids and/or unsightly brown areas within the baked crumb"). The Office Action refers Applicants to columns 7-8 for disclosure of leavening agents (page 3 of the Office Action). However, that portion of Yong '315 does not equal the claimed features of "said chemical leavening agent is a delayed action type chemical leavening agent and is uniformly dispersed between the dough layers and the fat layers". Thus, Yong '315 instantly fails to disclose all features as instantly

claimed, and not all requirements for a *prima facie* case of obviousness have been satisfied.

Further, as can be seen from the previously submitted Rule 132 Declaration, placing the bread-like product of Yong '315 from a frozen state directly into an oven at a high temperature and for a short period of time does not achieve the present invention. Thus, there is no motivation for one having ordinary skill in the art to even achieve the present invention because even with freezing the product of Yong '315, the present invention would still not be achieved (see the factual evidence in the Rule 132 Declaration). Thus, there is no motivation to modify Yong '315 so as to achieve the present invention because Yong '315 would be made inoperative.

Applicants respectfully request reconsideration and withdrawal of this rejection.

Unexpected Results

Applicants again submit that the present invention achieves unexpected superior results that a frozen pie dough can be directly (*i.e.*, without thawing) baked at a high temperature and in a short period of time, when comparing to any conventional pie dough (*i.e.*, see Comparative Examples in specification). Applicants respectfully refer the Examiner to the Rule 132 Declaration, and request full consideration of this Declaration for evidence of unexpected results that exist for the present invention. Based on these unexpected

results, Applicants respectfully submit that this rejection under § 103(a) is overcome.

Conclusion

In view of the above remarks, Applicants respectfully submit that the present claims encompass subject matter that is patentably distinguishable from the cited reference. Thus, Applicants respectfully request the Examiner to withdraw all rejections and allow the currently pending claims.

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that the Examiner pass the application to issue.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Gerald M. Murphy, Jr.

Reg. No. 28,977

P.O. Box 747

Falls Church, VA 22040-0747

(703) 205-8000

GMM/ETP/las
0649-0774P

Attachment: Version with Markings to Show Changes Made

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claims 8-9 have been canceled.

The claims have been amended as follows:

1. (Amended) A frozen pie dough to be stored in a frozen state which comprises a pie dough having dough layers containing a cereal flour, water and a fat as the main components and fat layers laminated with said dough layers alternatively,

wherein voids and a chemical leavening agent are present between the dough layers and the fat layers of said pie [dough.] dough, and said voids are generated by a quick action type chemical leavening agent and said chemical leavening agent is a delayed action type chemical leavening agent and is uniformly dispersed between the dough layers and the fat layers.

2. (Amended) The frozen pie dough as claimed in claim 1, wherein [characterized by having] said pie dough has a pie dough density of 1.01 g/cm³ or more and less than 1.085 g/cm³.

Claims 18-24 have been added.